

**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA**

**COMMENTS OF FRONTIER CALIFORNIA INC. (U-1002-C) ON RESOLUTION T-  
17525 RACE COMMUNICATIONS CASF GRANT TO CONSTRUCT THE GIGAFY  
PHELAN PROJECT**

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**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA**

Frontier California Inc. (U-1002-C) (“Frontier”), in accordance with Rule 14.5 of the Rules of Practice and Procedure of the California Public Utilities Commission (“CPUC”), hereby submits comments on Resolution T-17525 issued May 30, 2017 (“Resolution”), which would award Race Telecommunications (“Race”) \$27.6 million from the California Advanced Services Fund (“CASF”) to deploy broadband to underserved households in the Phelan area of San Bernardino County.

**I. Introduction**

Frontier urges the CPUC to reject the Resolution in its current form because Frontier is currently in construction to expand broadband access at “served” speeds by August 2017 to at least 85 percent of the households this application proposes to serve. The Resolution ignores and undermines CPUC Decision 15-12-005 ordering Frontier to upgrade broadband in Verizon-acquired areas with funding from the Connect America Fund (“CAF”) and Frontier private investment. The Resolution’s key finding that the Race project is financially viable is based on a projected take rate of 68 percent, which is factually inconsistent with the 70 percent projected take rate the Federal Communications Commission (“FCC”) adopted for Frontier’s CAF-funded broadband upgrade. Moreover, the Resolution raises significant due process issues and leaves many unanswered questions in its explanation of the recently “discovered” overstatement of households for which the applicant seeks funding. Overall, this Resolution lacks factual and policy justification to award another \$27.6 million from dwindling CASF funds to subsidize a second provider in the same market and thereby require California customers to pay *twice* for broadband in one area when so many communities across the state remain unserved.

**II. Frontier’s Challenge Demonstrates that at Least 85% of Households in the Race Project Area Will Have Broadband at “Served” Speeds by August.**

Frontier has provided Communications Division (“CD”) staff detailed information supporting its challenge to the Race application and demonstrating that Frontier will – by August 2017 – make available broadband service at speeds of *at least* 6 Mbps download and 1.5 Mbps upload to 7,181 of the households in the Race project area.<sup>1</sup> Many more additional households in the area – beyond what the Race application covers – will have increased access by August as part of Frontier’s broadband deployment approved by CPUC Decision 15-12-005. The Resolution is therefore inaccurate in stating on page 9 that the Race project “would bring communications to households without broadband.” Accordingly, the Frontier households that are now being upgraded to “served” speeds should be deemed ineligible for a CASF grant and removed from the Race application.

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<sup>1</sup> Many of those households will have speeds up to 100 Mbps download, but ALL will have access to at least 6 down and 1.5 up service.

### **III. The Financial Viability Analysis is Factually Incorrect and Inconsistent with the Universal Service Policy of CAF Funds the CPUC Ordered Frontier to Accept.**

The Resolution states that CD staff reviewed and analyzed “current and proposed broadband infrastructure” and financial viability and found that the Race project area lacks “significant competition that would undermine survivability of the project.”<sup>2</sup> These findings completely ignore that Frontier’s broadband upgrade in the project area will provide significant competition, especially because Frontier’s construction will be complete in just a few months – long before Race could even begin deployment. Moreover, even minimal review of the California broadband landscape would have revealed that (1) the Race project area has been designated by the FCC since early 2015 as eligible for CAF funding, and (2) Frontier accepted \$228 million in CAF funding in California as part of the CPUC approval of the Verizon acquisition -- a very prominent CPUC proceeding throughout 2015 until the decision was adopted in December 2015.<sup>3</sup>

Ignoring the reality of competition posed by Frontier’s broadband upgrade also renders the Race projected take rate of 68 percent of potential subscribers severely flawed.<sup>4</sup> This projected take rate for Race is factually inconsistent with the 70 percent take rate that the FCC assumes Frontier will achieve as a result of the CAF-funded upgrade. It is mathematically impossible for both take rates to be achieved, leaving one or both providers subsidized with public funds doomed to fail. The facts simply do not support the Resolution’s conclusion that the Race project is financially viable.

Moreover, award of \$27.6 million in customer surcharge funds to subsidize a second provider in a CAF-eligible area is completely at odds with the CPUC decision ordering Frontier to accept CAF funds to help close the Digital Divide in California. In designing the appropriate level of CAF funding to incentivize buildout to areas that do not otherwise present the business case for broadband, the FCC only provided enough funding assuming that there was no broadband competitor in the area and that 70 percent of households would subscribe to the CAF recipient’s service.<sup>5</sup> Award of a CASF grant to fund an overbuild of Frontier in this area would eviscerate this assumption, and the entire business case for CAF buildout would be gone.

Given limited universal service funds and extensive unmet need for expanded broadband access, the FCC has repeatedly explained that funding overbuilding undermines the goals of universal service and should not occur. As the FCC concluded in 2011 and repeated as recently as March of this year, “providing universal service support to multiple providers in a given area leads to duplicative investment by multiple [carriers] in certain areas at the expense of investment that could be directed elsewhere, including areas that are not currently

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<sup>2</sup> Finding #4 on page 17, page 10 (describing the Race project area as a “high impact area,” and page 6 (“CD also conducted a qualitative evaluation of the project area, existing infrastructure, and community needs.”).

<sup>3</sup> By not proactively incorporating CAF-funded deployment into review of CASF applications, the CPUC fails to follow state policy directing the CPUC to leverage and maximize California’s draw of federal funds. See Public Utilities Code Section 270(c) and Section 914.7(a)(8).

<sup>4</sup> Page 6 and Appendix A-1. The Resolution does not appear to adjust the actual numbers of customers counted in the take rate to align with the significant household reduction after “discovery” of the applicant error.

<sup>5</sup> *Connect America Fund*, Report and Order, 29 FCC Rcd 3964 ¶¶ 172, 177 (2014).

served.”<sup>6</sup> Duplicate support “impose[s] an excessive burden on consumers and businesses who ultimately pay to support the [Universal Service] Fund.”<sup>7</sup> As the FCC described in the 2010 National Broadband Plan:

Areas with extremely low population density are typically unprofitable for even a single operator to serve and often face a significant broadband availability gap. Subsidizing duplicate, competing networks in such areas where there is no sustainable business case would impose significant burdens on the USF and, ultimately, on the consumers who contribute to the USF.<sup>8</sup>

These consumers the FCC is protecting include the same who contribute to the CASF – all California customers of communications service – and the CPUC should protect them as well.

#### **IV. The Newly Discovered Error in the Race Application Leaves Many Unanswered Questions about the Actual Number of Households in the Grant, the Deduction to Correct the Error, and Confusing Business Customer Costs.**

The Resolution states that, upon review of Frontier’s challenge information, staff “discovered” that the Race application overstated the request for funding by an excess of 755 households – a very significant error when the per-household cost of fiber to the home (“FTTH”) service is so high. The Resolution states that the error reduces the households in the grant from 8,361 to 7,606 households. But footnote 22 on page 15 refers to 8,453 “total connections estimated in Race’s budget, including unoccupied households, businesses, and spares” and then describes the grant adjustment based on a “difference” of 845. Moreover, although the per-household cost was \$3,417 in the first resolution, footnote 22 states that the adjustment calculation is based on “a \$1,856 per housing unit equipment and premise-drop cost.” This confusing explanation leads to many questions, including the following:

- Why did Frontier’s data lead to discovery of this error, and why did the information Race provided not make this overstatement of households apparent to staff during the 19 months since this application was filed and subsequently modified multiple times?
- Why is the per-household deduction \$1,856 when the per-household cost in the grant is \$3,417?
- Why is the adjustment based on a “difference” of 845 rather than 755, which is the difference between households in the May 11 draft resolution and the pending Resolution?

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<sup>6</sup> *Connect America Fund*, Report and Order and Further Notice of Proposed Rulemaking, 32 FCC Rcd 2152 ¶ 83 (2017) (citing *Connect America Fund*, Report and Order and Further Notice, 26 FCC Rcd 17663 ¶¶ 316-20 (2011)).

<sup>7</sup> *Id.* ¶ 4.

<sup>8</sup> FCC, *The National Broadband Plan* at 161 (2010), <https://transition.fcc.gov/national-broadband-plan/national-broadband-plan.pdf>.

- Does the reference to 8,453 “total connections estimated in Race’s budget, including unoccupied households, businesses, and spares,” indicate that funding is included for connections to businesses? What is a “spare” and how many spares are funded?
- Given that the Resolution on page 3 states that 85 businesses will get broadband access, could it be that businesses account for the difference between the 8,453 total connections in the Race budget and the 8,361 households in the grant (8,453 minus 8,361 = 90)?
- Why is the adjustment of the Race project households to correct the error based on 2017 Department of Finance estimates while an adjustment to Frontier’s “served” households is based on 2016 Census estimates?

All California customers who pay the surcharges that fund the CASF – and the many communities in California that remain unserved – deserve complete answers to these questions before the CPUC awards diminishing CASF funds for another extremely expensive FTTH project. More than a few confusing footnotes is required to adequately explain a newly discovered significant error and support the draft resolution’s ultimate conclusion that the award of this \$27.6 million grant is “reasonable.”<sup>9</sup>

V. **Significant Due Process Issues are Presented by CPUC and Staff Procedures Related to this Application, With Magnified Impact Given the Large Size of this Grant.**

The Resolution highlights many procedural problems with the CASF application process and due process issues, including several detrimental to Frontier. Most significantly, the Resolution in footnote 20 summarily rejects the Frontier challenge as late without including the reasons Frontier provided staff related to timing of the Verizon acquisition and CAF deployment schedule pursuant to Decision 15-12-005 and settlement agreements with the California Emerging Technology Fund and other parties. The Resolution includes no discussion of whether a technical violation of CASF challenge rules causes greater harm than an award of \$27.6 million based on findings that completely ignore the reality of the broadband upgrade described in the challenge. Strict application of this rule to Frontier is especially curious given other deviations from the rules and due process issues associated with this application, including, but not limited to, the following:

- Race CEO Raul Alcaraz was allowed to speak during the public comment period of the May 11 CPUC meeting, which President Picker explained to him was procedurally improper.<sup>10</sup> This procedural error (and the harm to Frontier from misstatements about Frontier’s broadband plans and service) was compounded when the CPUC’s General

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<sup>9</sup> Finding #9. Given the discovery of the Race error only after a challenge, and given that many CASF applications are not challenged, is it possible that this housing unit/household error has occurred in other grant applications? Has overstatement of households ever been reviewed in audits of the CASF program?

<sup>10</sup> “[If] you’re actually the applicant for this project then you probably shouldn’t have been addressing us under public comments. It’s maybe a fine point to you, but it’s actually procedurally very important to us.” (Statement of President Picker).

Counsel apparently instructed Race to distribute written comments to the CASF service list, even though the comment period had closed. The Resolution then makes it even worse by restating these comments without explaining why they were permitted. Race's comments must be stricken from the Resolution because they are not permitted under the Rules of Practice and Procedure. The rules do not allow an applicant to speak during the public comment, nor do they allow the General Counsel to waive or modify the rules regarding the filing of comments by applicants.

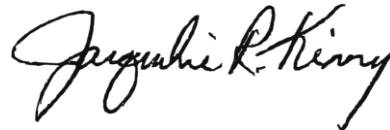
- The Resolution's summary on page 16 of "informal" comments improperly filed by the Inland Empire Broadband Consortium and others must be deleted because they were filed after the comment period prescribed in Rule 14.5 or otherwise reflect an arbitrary process where staff apparently selects some, but not all, of the many "informal" submissions regarding an application to be included in a resolution.
- The Resolution fails to cite any CASF rules for when modification of an application triggers a new challenge window and for when an application can be put "on hold" to allow a challenger to complete a broadband upgrade. The Resolution describes a process that appears to have been followed arbitrarily to Frontier's detriment.

For all the reasons stated, Frontier respectfully requests that the CPUC, consistent with Decision 15-12-005, reject the Resolution and Race application in its current form and preserve the precious remaining CASF funds for expanding broadband access in areas where no provider is building infrastructure to "served" speeds.

Respectfully submitted,



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## CERTIFICATE OF SERVICE

I certify that this day I served by e-mail a copy of the “**Comments on Resolution T-17525 – Race Telecommunications CASF Grant to Construct the Gigafy Phelan Project.**” to the parties on the service list attached to the draft resolution.

June 19, 2017 at Sacramento, California



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